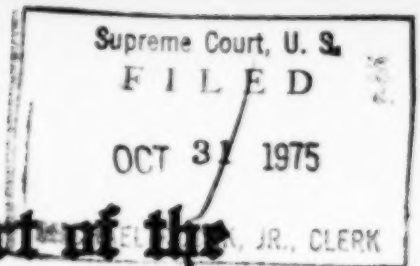


75-6441



**In the Supreme Court of the
United States**

October Term, 1975

No.....Misc.

ROGER L. BAKER & EDNA I. BAKER,
Petitioners,

vs.

THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF OREGON

Respondents.

**MOTION FOR LEAVE TO FILE PETITION FOR
WRIT OF MANDAMUS**

and

PETITION FOR WRIT OF MANDAMUS

Roger L. Baker &
Edna I. Baker

Citizens of the
United States of
America

P.O. Box 5018
ALOHA, OREGON 97005

In Propria Persona
for petitioners

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**In the Supreme Court of the
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October Term, 1975

No. _____ Misc.

ROGER L. BAKER & EDNA I. BAKER
Petitioners,

vs.

THE UNITED STATES DISTRICT COURT
for the DISTRICT OF OREGON, et al.

Respondents.

MOTION

For leave to file Petition for Writ of Mandamus

The petitioners move the court for leave to file the petition for writ of mandamus, hereto annexed, and further moves that an order and rule be entered and issued directing the Honorable United States District Court for the District of Oregon and particularly the Honorable Skopil, District Judge of said District, to show cause why a writ of mandamus should not be issued against said District Court, in accordance with the prayer of said petition, and why the petitioners should not have such other and further relief in the premises that may be just and meet.

Roger L. Baker & Edna I. Baker
Petitioners

1

**In the Supreme Court of the
United States**

October Term 1975

No. _____ Misc.

ROGER L. BAKER & EDNA I. BAKER
Petitioners,

vs.

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON, et al.,
Respondents.

PETITION

for a Writ of Mandamus to the United States District Court for the District of Oregon, and particularly to the Honorable Skopil, District Judge of said District.

Petitioners Roger L. Baker and Edna I. Baker, pray that a writ of mandamus issue to the United States District Court of the District of Oregon and particularly to the Honorable Skopil, District Judge of said District, to show cause on a day to be fixed by this Court, directing the aforesaid Judge and the United States District Court to issue an order assigning this Constitutional issue to a three-judge court as required by Title 28 Sections 2281 and 2284.

Said Constitutional issue was filed June 4, 1975 (No. 75-530) as civil action with a motion for an interlocutory injunction, which said forms were served on the Attorney General of the State of Oregon.

OPINIONS BELOW

The opinions of Judge Otto R. Skopil Jr., United States District Court, District of Oregon dated October 1, 1975 by Order of Dismissal (R-44) with accompanying letter at page (E-1), and dated August 11, 1975 by statements in transcribed hearing page (T-16,17).

JURISDICTION

The judgment of the United States District For The District of Oregon was entered on October 2, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1651.

QUESTIONS PRESENTED

(1) Whether Oregon State Revised Statute 113.195, which allows summary hearings in property matters without specific restrictions or charges, is beyond the Constitutional Limits for Legislative enactments, whereas, the 14th Amendment to the United States Constitution provides that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law".

(2) Whether a United States District Court can:

a. delay 120 days before deciding a Congressionally Mandated issue, ie, 28 U.S.C. Sects. 2281 & 2284? Filed June 4, 1975 dismissed October 2, 1975.

b. decide an Interlocutory Injunction on merits, whereas the issue requires an Interlocutory Injunction before a three-judge court to reveal the merits?

(3) Does the indiscretion of a United States District Court which deprives a citizen of any rights guaranteed by the United States Constitution invoke those specific Articles of said Constitution as follows:

ARTICLE III, SECTION 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority;, citizens or subject.

ARTICLE VI, Second Para. This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

(4) May the Judiciary impair the rights to obligation of contract, wherein said challenged state law is being used as a means of enforcing performances by Petitioners without full compensation on contract. See exhibit on page (E-2).

ARTICLE I, SECTION 10. No state shall pass anylaw impairing the obligation of contract,.....

Whereas, if it please this court, take judicial notice of a motion by petitioners in state court, praying for remedy from said court's inadequate decree. (E- 2)

(5) In the unconstitutional application of an overbroad and non-specific state statute, the state may hide behind unethical acts by changing judges to obscure responsibility.

a. that the statute is unconstitutional, we have shown, in that it doesn't require specific charges, ie., overbroad.

b. that the enforcement of the state statute was an unconstitutional application, we have left to the courts own obvious conclusion as a merit not within the single judges scope, when application is for three judges.

Steffel v. Thompson (1974)39Ld 2D 505
513, and 514 94S.Ct.1209

c. that the state may shift judges to obscure responsibility, we cite exhibit page (R-11) of petitioners motion for interlocutory injunction in the record as compared to new exhibit (E-3).

The court has changed chairs in contemplation of petitioners amending the complaint. Bond v. Dentzer

(1971 DC NY) 325 F Supp 1343

In summation, our reliance on the 14th Amendment to the United States Constitution, as it must take precedence over the 11th Amendment, where a state has violated basic tenets of justice protected by said Constitution.

73-762 Sosna v. Iowa 11/10/73 appeal

USDC NIowa (360 FSupp 1182, 42LW2086

STATE RIGHTS

These questions in no way involve the states sovereign right to such police powers as may be required to protect the health and welfare of its citizens.

As this Court has said, an appeal does not provide a party with the benefits of an original trial, whereas Plaintiffs have never been allowed more than a summary hearing, and Plaintiffs have objected to the law that will strip a citizen of his rights by summary hearing.

The Congressionally mandated extraordinary remedy provided by 28 U.S.C. Sects. 2281 & 2284 does not specify that the single United

States District Court Judge shall hold a hearing with both parties nor does it specify allowance of Defendants motion to dismiss until a show cause order has been served upon the Defendant. The procedure followed by said court was not in accordance with congressional intent as the history of said act will indicate (the courts were issuing injunctions on ex parte hearings, which was changed to a show cause proceeding) and a three judge court was instituted to provide a de novo trial where necessary.

CONSTITUTIONAL PROVISIONS

Petitioners' civil action was not properly considered as an application for Constitutional relief and said courts failure to act has allowed further irreparable damage to be imposed on petitioners as can only be fully exposed within an interlocutory type of proceedings.

It was asserted in the motion for an interlocutory injunction that Oregon Revised Statute 113.195 is in violation of the 14th Amendment to the United States Constitution.

In the hearing dated August 11, 1975 on page 13, line 5, the assistant Attorney General Timothy D. Norwood while representing the State of Oregon said, "That is a broad general statute", which said opinion is in agreement with petitioners application, whereas said statute is broad enough to allow the state court to enforce said statute without statutory grounds, which said lack of specific grounds is in violation of the 14th Amendment to the United States Constitution as an over-broad statute without protections of due process of law and equal protection of the laws.

It has been said in numerous federal court case opinions that the federal courts lack jurisdiction in probate matters but there has never been a rejection of a constitutional issue in federal court whereas in Hauenstein v.

Lynham 100 U.S. 483 this Court said that a state statute that is in violation of a treaty could not stand wherein said state statute was a probate escheat law enacted within the sovereign rights of said state and said Title 28 Sects. 2281 and 2284 apply to any statute in conflict with the federal constitution, federal statute, or treaty.

This court has consistently held that no law shall deprive a citizen of the right to stand and be formally charged with a statute and the right to have a witness present contrary evidence.

This court has never faced squarely to the mandate of Article III Sect. 2 of the United States Constitution, as follows:

"The judicial power shall extend to all cases, in law and equity, arising under this constitution, the law of the United States, and treaties made, or which shall be made under their authority;..."

Whereas, the above described limitations provide remedy for conflict between the federal constitution, laws or treaties, and citizen or state. The cutting edge is if a state comes into conflict with the federal in violation of citizen rights, within the language of the constitution, it is obligatory on the federal to prosecute for those rights.

When a citizen challenges a state statute as being repugnant to the federal limitations, said citizen is invoking the express will of the federal constitution within the language of the framers of said constitution, and the will of the citizens, whereas, said citizen is not seeking a private right. Wherefore, a citizen versus a state, seeking remedy for constitutional issue, is a proper plaintiff and defendant.

"Where a court of three judges should have been convened, and was not, this Court may issue a writ of mandamus to vacate the order or decree entered by the District Judge and directing him, or such other judge as may entertain the proceeding, to call to his aid two other judges for the hearing and determination of the application for an interlocutory injunction."

Stratton v. St. Louis S.W.RY. 282 U.S. 11

The court erred by not following the strict language of the congressional enactments 2281 & 2284 as follows:

(1) 2281 restricts the restraining of the action of any state officer, for the purpose of restraining an unconstitutional state statute, to a hearing and determination by a three-judge court, whereas if the court restrains a state officer said state could assign a different officer. Plaintiff can show by exhibit(E-3)that said state did prepare for and did change said officer. Therefore, Plaintiff contends that the court in error should accept the State of Oregon as the proper party defendant.

(2) 2284 Sect. (1) prescribes the duty of the court in error is to immediately notify the Chief Judge of the Circuit, which act is to constitute a three-judge court. Plaintiff contends the court in error failed to initiate and constitute a three-judge court.

(3) Sect. (3) of 2284 prescribes that the court in error may grant a temporary restraining order to prevent irreparable harm, which said court refused to grant when confronted with actual and potential damage to Plaintiffs.

(4) Sect. (4) of 2284 prescribes the urgency of convening a three-judge court, whereas the court in error held jurisdiction 120 days while considering the merits of the case.

(5) 2284 Sec. (5) prescribes the limitations of a single judge, wherein, he shall not hear and determine any application for an Interlocutory Injunction or motion to vacate same, or

dismiss the action, whereas Plaintiffs contend the court dismissed on those merits rather than said courts convening of a three-judge court, by the statute, when the state statute in question is plainly overbroad and lacking in Constitutional protections.

Nashville, C. & St. L. Ry. Co. v. Taylor (1898 CC Tenn), 86 F 168, 183, 184 (NS) 44 L ed 1219, 20 S Ct 1822 mod on other Grd CA 6th 88 F 350 cert den. 172 US 647, 43 Led 1182 195 Ct 887:

"It was said in the discussion....that the prohibitions of the fourteenth amendment are directed against state action only, and the correctness of this proposition is fully conceded, but a too limited definition and a too narrow view of what constitutes state action must not be entertained. State action, to which the prohibitions of the fourteenth amendment extend, is not limited to a legislative enactment as it comes from the hands of the legislature, but extends to all instrumentalities and agencies officially employed in the execution of the law down to the point where the personal and property rights of the citizen are touched. Under any other interpretation it would be practically possible to reduce the constitutional guaranty to a mere brutum fulmen. A statute might be framed entirely fair upon its face, which, by the omission of necessary affirmative provisions, and a failure to contain needed restrictive directions, would furnish color of authority for practices thereunder which would be destructive of rights most carefully guarded by the Constitution."

See Douglas Park Jockey Club v. Grainger (1906 CC Ky) 146F414 Rev. other grad (CA 6th) 148 F 513, 8 Ann. Cas 997.

In Davis v. Burke 179 U.S. 399, 403 (Oct. 1900) Mr. Justice Brown quoted Judge Cooley in his work on Constitutional Limitations (p.99).

"A Constitutional provision may be said to be self executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced; and it is not self executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law. Thus a constitution may very clearly require county and town government; but if it fails to indicate its range, and to provide proper machinery, it is not in this particular self-executing, and legislation is essential."

The foregoing quotation applies to a state statute that is overbroad and not specific whereas said statute is not self-executing without judicial supplement as to just cause wherein the instant case required said court to give an unenforceable order and a successive show cause order for alleged non-compliance with said unenforceable order.

Said unenforceable order was given by said court that Plaintiffs hire an attorney which said order is not required specifically by statute of said State.

On statutory opinions by Justice Storey in *Wilkinson v. Leland* 7 L.ed 542, 553.

"We are not prepared, therefore, to admit that the people of Rhode Island have ever delegated to their Legislature the power to divest the vested rights of property, and transfer them without the assent of the parties. It is admitted that the title of an heir by descent in the real estate of his ancestor, and of a devisee in an estate unconditionally devised to him is, upon the death of the party under whom he claimed, immediately involved upon him, and he acquires a vested estate."

As noted in above Justice Storey allowed the title vests in devisees at the testators decease whereas Petitioners submit, all just debts against the estate have been settled except those debts which the State of Oregon is using to enforce its inappropriate interference with a contested contract.

On statutory opinions Judge Cooley quoted Justice Storey in *Wilkinson v. Leland* 7 L.ed 542, 553.

"In a government professing to regard the great rights of personal liberty and of property, and which is required to legislate in subordination to the general laws of England, it would not lightly be presumed that the great principles of Magna Charta were to be disregarded, or that the estates of its subject were liable to be taken away without trial, without notice, and without offense.....

That government can scarcely be deemed to be free where the rights of property are left solely dependent upon the will of a legislative body without any re-

straint. The fundamental maxims of a free government seem to require that the rights of personal liberty and private property should be held sacred. At least no court of justice in this country would be warranted to assuming that the power to violate and disregard them--a power so repugnant to the common principles of justice and civil liberty--lurked under any general grant of legislative authority, or ought to be implied from any general expressions of the will of the people. The people ought not to be presumed to part with rights so vital to their security and well-being without very strong and direct expressions of such an intention.... We know of no case in (*658 which a legislative Act to transfer the property of A to B without his consent has every been held a constitutional exercise of legislative power in any State of the Union. On the contrary, it has been constantly resisted as inconsistent with just principles by every judicial tribunal in which it has been attempted to be enforced...."

In *Jones v. Securities Commission*, 298 U.S.1 24.

"Mr. Justice Bradley in *Boyd v. United States*, 116 U.S.616, 635...."It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure.... It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be obsta principiis."

We feel confident that this court will find failure of the lower court to review defendants case law and failure to properly convene a three-judge court so that defendants may properly defend the unconstitutional invasion of property rights and the deprivation of trial rights which said state statute has allowed.

Mr. Justice Day in *Garfield v. Goldsby*
211 U.S. 249, 262.

"....there is no place in our constitutional system for the exercise of arbitrary power."

Or in *Cancel v. Wyman* (1971, CA2 NY) 441 F2d 553:

"An order, denying a motion to convene a Three-judge court to determine constitutionality of state statute but retaining jurisdiction to determine whether certain state regulations were consistent with federal provisions, is not an appealable order. If it is to be attacked at all it should be attacked by means of mandamus."

STATEMENT OF THE CASE

On March 21, 1975 petitioner rejected the claim of Paul M. Reeder, Attorney in Hillsboro, Oregon, against the estate of Fritz Gindhart and were notified on March 27, 1975 of a summary hearing on said claim which was set for April 7, 1975.

Petitioners attorney James E. Auxier, In Portland, Oregon, advised petitioners to argue said claim on the grounds that it was excessive and petitioners notified their attorney of his termination.

Petitioners notified said court of a Fraud Conspiracy Complaint which was related to said claim and petitioners did not want a summary hearing. Said court held the April 3 hearing in the presence of petitioners and their terminated attorney and ordered petitioners to hire another attorney or be removed as personal representative of the estate of petitioners father.

See exhibit (R-10) in petitioners' motion for Interlocutory Injunction.

Petitioners hired Frank Porcelli, attorney in Beaverton, Oregon, to protect their interest and hire handwriting expert to examine papers in the aforementioned Fraud Conspiracy.

See exhibit(E-5)petitioners contract with Frank Porcelli.

Said court served notice (see exhibits) on petitioners dated April 25 to appear and be removed.

Petitioners filed a petition in response with affidavit.(E-4)

Aformentioned Frank Porcelli informed petitioners that he would not represent our interest and appeared at May 8 hearing to sit at counsels table next to petitioner Edna I. Baker and said court refused to hear petitioner Roger L. Baker as a party to said matter or as a witness. Petitioner Edna I. _____

Baker objected to the proceedings and gave notice of having filed a constitutional complaint in federal court.

Said court has appointed a personal representative of its own choosing against the express will of the testator and against the expressed interests of the estate. Said court is allowing rejected claims against the estate without trial and said court is enforcing a land sale contract against the estate of which said contract is in default to petitioners in excess of \$20,000 and has been in default since January 1975.

The enactment of O.R.S. 113.195 has allowed said court to remove petitioners from control of their own properties by and through a summary hearing without just cause or any other statutory cause.

The Laws of Oregon provide ample protection for creditors to an estate, wherein they may attack the personal representative in a regular court of law if said representative denies said creditors claims.

Judge Otto Skopil has acted beyond the bounds of authority, as provided by the United States Constitution, wherein said Constitution proscribes deprivation of specific rights, whereas judge Skopil was presented with a prima facie unconstitutional state statute, and with evidence of irreparable damage. Judge Skopil was provided with the authority, and the mandate to restore constitutional practice by the language and the intent

of the 14th Amendment to the United States Constitution, and Judge Skopil was provided with the guidance and the limitations to initiate the proper procedure to correct the unconstitutionality of the state law by the congressional mandate of 28 USC sects. 2281 and 2284.

It should not matter to this court that petitioners may not know the instituted and stylized language and procedure used by the courts, and it should not matter that petitioners may not see the reason a case could be dismissed on the grounds that a judge may have acted unconstitutionally, whereas, the only way said judge could have acted constitutionally would have been to reject said state law that is repugnant to said constitution.

Precedence in statutory attacks has pretty much established that a single district court judge should not look to the merits of a case if a substantial issue is presented to court, yet, judge Skopil expressed the doubt that a personal representative had any constitutional rights in a probate court. (T-16,17) THE JUDGE COULD NOT HAVE ENTERTAINED THAT DOUBT WITHOUT FIRST HAVING CONSIDERED THE SUBSTANTIALITY OF THE ISSUE.

If no rights had been violated, then no question could have been entertained about the rights of a personal representative.

A Constitutional descision founded on the merits, without a full trial is a summary proceeding, and where it is evident that the merits against petitioners may not have been all

presented in open court, with opportunity for rebuttal, establishes an evil precedent that all citizens must suffer or fight.

REASONS FOR GRANTING THE WRIT

The decision below - upholding a state probate STATUTE WHICH INVOLVES PROPERTY RIGHTS of heirs to an estate, and WHICH IS PRIMA FACIE IN VIOLATION OF THE 14TH AMENDMENT PROTECTIONS OF DUE PROCESS AND EQUAL PROTECTION - was not founded on the issue in any manner.

The Court below took ISSUE WITH THE MERITS OF THE CASE which was OBJECTED TO BY PETITIONER AS OVERSTEPPING SAID COURT'S AUTHORITY.

The Court below took ISSUE WITH THE DEFENDANT STATUS, which is not in accordance with the United States Constitution ON A VIOLATION OF THE 14TH AMENDMENT as provided in Articles III and VI.

Article III provides that any ENTITY SHALL HAVE DEFENDANT STATUS WHEN a federal law, treaty, or the CONSTITUTION IS VIOLATED.

Article VI PROVIDES THE COURTS, both federal and state, WITH CONSTITUTIONAL LIMITATIONS.

Plaintiffs contend that judicial enforcement of ORS113.195, an overbroad and restrictive probate removal code, is violative of rights guaranteed by the 14th Amendment to the United States Constitution. The civil rights intended to be protected from discriminatory state

action, by said 14th Amendment are the " rights to acquire, enjoy, own and dispose of property".

(1948) Shelley v. Kraemer 334 U.S. 1, 20

This Court restricted the power of the U. S. President to remove his own appointed Federal Trade Commissioner from office for causes other than specified in the statute.

(1935) Humphrey's Executor v. U.S.
295 U.S. 602

The United States Supreme Court at its discretion may hear a petition for an extraordinary writ of mandamus under 28 U.S.C. Sect. 1651 and may remand with an order to convene a three-judge court in a case with a substantial constitutional issue with irreparable damage.

The Court below failed to act timely to preserve petitioners rights by convening a three-judge court or by dismissing said application whereas said failure has encouraged the state court to appoint a new personal representative and through which said appointment said court has planned to violate an obligation of contract, to pay for a fraudulently executed appeal bond, to attach evidence of false affidavit issued by a state judge, and to settle a claim for an attorney who was legally notified to sue in a regular court of law as the Oregon Probate Code allows. (E-6)

Said District Court's failure to convene a three-judge court pursuant to petitioners application has deprived petitioners of the right to direct appeal to this court under Title 28 Sect. 1253.

Both Sections 2281 and 2284, 28 U.S.C. are jurisdictional as seen from the mandatory language employed by Congress. See Kennedy v. Mendoza-Martines, 372 U.S. 144, 83 S.Ct. 554, 9 L.Ed. 2d 644 (1963), wherein this court, on a third appeal, on its own motions raised the question whether the case had not all along been one for Three-Judges, and an Act of Congress being involved the Court was once again faced with the prospect of a remand and a new trial, this time by a Three-Judge panel.

The Court below erroneously refused to act on petitioners application, thereby depriving petitioners of the right to direct appeal.

CONCLUSION

If this court does not remand this case for a three-judge court petitioners will be subjected to coercion, imprisonment, and deprivation of property, as exhibited in(E- 3). The state court is attempting to acquire evidence of said court's indiscretions to prevent future actions by petitioners.

Petitioners contend that this court has the jurisdiction, authority, and cause as expressed in this petition of an urgent and pressing need to restore constitutionally protected rights to petitioners, of which the State of Oregon has denied and deprived, and of which said rights, the State of Oregon is cont-

inuing to transgress. Petitioners further contend that a three-judge court could resolve all issues and protect the sovereign rights of the State of Oregon, within the limitations of the United States Constitution.

Wherefore, Petitioner prays:

1. That a writ of mandamus issue from this Court directed to the Honorable United States District Court of the District of Oregon, and particularly to the Honorable Judge Skopi², District Judge of said Court; to show cause why mandamus should not issue from this Court directing it to vacate its order of dismissal of Petitioner's action, and remand the cause to said United States District Court for the District of Oregon, with directions to commence the procedure of convening a Three-Judge District Court under 28 USC sects. 2281, and 2284.

2. That this Court will issue a temporary restraining order, as prayed for in the Court below, to prevent the State of Oregon from further harassment and coercion, to wit:

On October 13, 1975 at 11:00 PM, the Probate Court had Edna I. Baker arrested, finger printed, photographed, and questioned, without benefit of counsel. That court held a hearing at 9:00 AM October 14, wherein said court refused to hear Roger L. Baker as Edna I. Baker's counsel and refused to entertain the constitutionality, or the legality of said court's jurisdiction. The probate court released Edna I. Baker, at 9:30 AM, October 14, on her own re-

cognizance, if and as she agreed to return Oct, 21, 1975

3. That Petitioners have such additional relief and process as may be necessary and appropriate in the premises.

Respectfully submitted

Roger L. & Edna I. Baker
Petitioners
(Acting as their own
attorney)
P.O. Box 5018, Aloha, Or.
97005

QUOTATION OF CHALLENGED STATUTE
O.R.S. 113.195

REMOVAL OF A PERSONAL REPRESENTATIVE.

- (1) When a personal representative ceases to be qualified as provided in ORS 113.095, or becomes incapable of discharging his duties, the court shall remove him.
- (2) When a personal representative has been unfaithful to or neglectful of his trust, the court may remove him.
- (3) When grounds for removal of a personal representative appear to exist, the court, on its own motion or on the petition of any interested person, shall order the personal representative to appear and show cause why he should not be removed. A copy of the order to show cause and of the petition, if any, shall be served upon the personal representative and upon his surety as provided in ORS 111.215. (1969 c. 591 sect. 99)

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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

OTTO R. SKCPIL, jr. Judge October 1, 1975

adressed to: (plaintiffs & defendants)

Re: Baker v. State of Oregon No. 75-530

Dear Mr. and Mrs. Baker and Mr. Norwood:

Three motions are now pending in this matter--plaintiffs' motion for interlocutory injunction, defendant's motion to dismiss, and plaintiffs' motion for temporary restraining order. I am today issuing an order granting defendants motion to dismiss and denying both of plaintiffs motions. A copy of the order is enclosed.

I have determined that this is not an appropriate case in which to convene a three-judge court under 29(sic) U.S.C. sects. 2281 and 2284. Plaintiffs claim they are entitled to have such a court convened because ORS 113.195, which provides for the removal of personal representatives, unconstitutionally violates the equal protection and the due process clauses of the fourteenth amendment. I find that the essence of their complaint, however, is not an attack upon the face of the statute but rather the manner in which it was applied in the removal of Mrs. Baker. The unconstitutional administration of a state statute is not a proper ground for convening a three-judge court. Overstock Book Company v. Barry, 436 F.2d 1289, 1295 (2d Cir. 1970). I would be compelled to reach the same conclusion even if the complaint were viewed as an attack upon the face of the statute since the complaint would in that case fail to state a substantial claim for injunctive relief. A single district judge need not request the convening of a three-judge district court when the complaint does not state a substantial claim. Maryland Citizens for a Representative General Assembly v. Governor of Maryland, 429 F.2d 606, 611 (4th Cir. 1970).

Because the convening of a three-judge court is not necessary, I have proceeded to consider the parties' motions. One of the grounds advanced by defendant in its motion to dismiss is that defendant, the State of Oregon, is not a proper party. Where the constitutionality of

a state statute is attacked under 28 U.S.C. sec. 2281 and 2284, the proper party defendant is the appropriate state official, not the state itself. Hafke v. State of California, 325 F. Supp. 544, 546 (C.D. Cal. 1971). If the plaintiffs' real claim is that the statute was unconstitutionally administered, then their action is still directed against the wrong party. For that reason, I grant defendant's motion to dismiss.

(signed)
Otto R. Skopil, Jr.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

ESTATE OF FRITZ GINDHART, BY
EDNA I. BAKER, HIS PERSONAL
REPRESENTATIVE,

APPELLANT-PLAINTIFF,

V.

JOHN R. SKOURTES, AND
JACQUELINE C. SKOURTES,

RESPONDENT-DEFENDANT.)

} NO. 33-587
} MOTION

1. Comes here Plaintiff with the Complaint that Defendant has moved onto the property under litigation with earth digging(sic) equipment and is causing irreparable damage to the walnut orchard, and has caused a gravel road to be built into the area approximately(sic) 600 feet long

2. Plaintiff hereby presents accounting of the contract on which the Supreme Court of the State Oregon has ordered Specific Performance:

PAYMENTS DUE	PAID BY CHK	STATUS OF CHK
\$8,153	\$8,153	HELD BY ATTY
SEPT 1972	SEPT 1972	not reissued
JAN 1974	JAN 1974	HELD BY ATTY
\$12,000	\$12,000	not reissued
JAN 1975	JAN 1975	HELD BY PLNTF
\$13,680	\$12,000	\$12,000
	(\$1680 short)	
TOT. \$33,833	TOT. \$32,153	TOT. hld by pltf \$12,000

Total payments due as of 1/75	Total payments paid by check	Total payments hld by pltf
\$33,833	\$32,153	\$12,000

3. Defendant has failed to fulfill contractual obligations in the amount of \$20,153 in checks that should have been reissued after the appeal. Defendant has further withheld the interest due on Jan. 1975 in the amount of \$1680, which brings the total amount currently due on contract in question, \$21,833.

4. Plaintiff claims the right of injunction with a new cause of action, trial no. 35-301, under specific laws 11.030 and 16.460, seeking impeachment of suit No. 33-587.

5. Defendant has failed to fulfill the contract as specified, and/or Defendant has refused to honor Plaintiffs right to injunction therefore, Plaintiff demands that the Court act in the natural manner required of it in a civilized world and find Defendant in contempt of Court and such further relief as the Court may find just and mete.

(signed)

(SEAL)

ROGER LEE BAKER
representing plaintiff

VERIFIED MAR 31, 1975

with proof of service on Defendant's atty

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON
Probate Department

In the matter of the Estate

of

FRITZ GINDHART, Deceased.

No. E-1533
PETITION

The undersigned, ROBERT BRIGGS, Personal Representative in the above captioned estate represents to the court that he will be out of the City until October 14, 1975.

At a hearing at 9:30 A.M. Thursday, October 2, 1975, Edna I. Baker failed to appear in response to a Subpoena Duces Tecum.

The Personal representative requests that the Court issue a bench warrant for the arrest of said EDNA I. BAKER and that bail be set at \$1,000.00 and that said EDNA I. BAKER be required to appear before the Honorable ALBERT R. MUSICK at the hour of 9:00 A.M., October 14, 1975.

Dated this 7th day of October, 1975.

(signed)

(ret. address)

ROBERT BRIGGS
Personal Representative

IN THE PROBATE COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

IN THE MATTER OF THE
ESTATE OF FRITZ GINDHART,

DECEASED

No. E-1533

PETITION

&

AFFIDAVIT

REGARDING THE CITATION FOR
REMOVAL OF EDNA I. BAKER
PERSONAL REPRESENTATIVE

I, Roger L. Baker, husband of the personal representative, being first duly sworn, depose and say that I am an interested person in any or all hearings for the above entitled estate and do acknowledge that I did personally accompany my wife, when on April 9, 1975, she did pay Frank Porcelli jr. Beaverton attorney, a check from the estate of Fritz Gindhart in the amount of \$850.00, see attached copy.

My wife did notify the court, on April 14 1975, that she had hired an attorney, as an attached copy will indicate.

My wife did advise said attorney during the first meeting, of several, of the court's threat to remove her.

My wife did know of the appearance date on May 2, 1975, at 1:30 P.M., as the aforementioned attached copy will indicate, but my wife was misled(sic) into believing that hearing would be cancelled if she hired another attorney.

I, Roger L. Baker, do hereby petition the above entitled court to cease and desist in any further orders which may constitute harassment or abridgement of Edna I. Baker's and my own rights of equal protection under the law, and due process of the law under the 14th Amendment to the United States Constitution.

As evidence of my interest in the above entitled estate, I hereby attach to this PETITION & AFFIDAVIT, copies of checks paid to various attorneys for said estate, by Edna I. Baker and myself, directly from our joint savings account at Washington Federal Savings and Loan.

(signed)

(SEAL)

sworn to May 7, 1975

Roger L. Baker, husband of
Edna I. Baker, pers. rep.

ATTORNEY FEE AGREEMENT

AGREEMENT made this (18) day of April, 1975 between EDNA BAKER, personal representative of the Estate of Fritz Gindhart, herein referred to as "Client," and FRANK PORCELLI, JR., Attorney at Law, herein referred to as "Attorney."

Client employs attorney to investigate the facts and circumstances surrounding the sale of real property by Fritz Gindhart to John R. Skourtes. It is understood that this agreement does not contemplate the institution of any law suit. The purpose of this employment is strictly limited to the determination of whether a possible cause of action exists. It is further understood and agreed that a law suit was previously filed on behalf of Client against John R. Skourtes and Jacqueline C Skourtes in the Circuit Court of the State of Oregon for the County of Washington file number 33-587, wherein Client was represented by Paul M. Reeder of Hillsboro, Oregon. It is further understood that law suit was prosecuted to an appeal to the Supreme Court of the State of Oregon wherein judgment for John R Skourtes and Jacqueline C. Skourtes was affirmed.

Client shall pay to attorney for all services rendered hereunder at the sum of \$40 per hour. It is further understood that Client has paid a retainer to Attorney in the sum of (\$850.) which sum has been placed in Attorney's Client's trust account. Said sum will be withdrawn as billed on a monthly basis.

Attorney in his discretion(sic) may employ a handwriting expert for the determination of the genuineness of signatures. All such experts shall report exclusively to Attorney. Fees charged by said experts shall be paid by Client.

Attorney has made no warranties as to the possibility of a good cause of action existing against John R. Skourtes and Jacqueline C. Skourtes, and all expressions made by Attorney relative thereto are matters of Attorney's opinion only. It is understood that Attorney has expressed his opinion that the chances of a good cause of action existing against John R. Skourtes and Jacqueline C. Skourtes are less than 50 percent. It is further understood that Client nevertheless respectfully requests Attorney to perform the services as agreed in this contract.

Cost, necessary disbursements, and reason-

able and personal travel expenses incurred by Attorney in advancing Client's interests are to be born by Client.

IN WITNESS WHEREOF Attorney and Client have executed this agreement on the day and year first above written.

(signed)

Client

(signed)

ATTORNEY

IN THE PROBATE COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

IN THE MATTER OF THE	}	No. E 1533
ESTATE OF FRITZ GINDHART		NOTICE BY PERSONAL
DECEASED		REPRESENTATIVE OF
		SEPARATE ACTION ON
)	CLAIM REQUIRED

TO: PAUL M. REEDER, Claimant

NOTICE IS HEREBY GIVEN that if you desire to prove the claim presented to the undersigned on or about 1/24/75 and disallowed by the undersigned on or about 3/13/75 you must commence a separate action against the personal representative within 60 days after the date of receipt by you of this notice.

signed (Edna I. Baker)

Personal Representative

(SEAL)

sworn to and verified April 21, 1975

IN THE MATTER OF THE ESTATE	}	No. E 1533
OF FRITZ GINDHART		FORECLOSURE
DECEASED		NOTICE

TO:
John R. Skourtes and
Jacqueline C. Skourtes

Real Estate Contract litigated in Washington
County Court No. 33-587

NOTICE IS HEREBY GIVEN OF INTENT TO FORECLOSE FOR WANT OF AGREED PROSECUTION OF PAYMTs.
INTEREST IS DUE ON SAID CONTRACT, AS WELL
AS BACK PAYMENTS WITH INTEREST.

signed (Edna I. Baker)

(SEAL)

Edna I. Baker personal rep.
of the Estate of Fritz Gindhart

sworn to and verified April 28, 1975